

PHILLIPS PETROLEUM COMPANY

IBLA 76-699

Decided November 24, 1976

Appeal from a decision of New Mexico State Office, Bureau of Land Management, rejecting a bid for a competitive oil and gas lease. NM 28790.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases

Where the ostensible high bidder for an oil and gas lease sold by competitive bidding is determined to be unqualified under the regulations and notice of sale, and the second high bid, proper in all respects, greatly exceeds the government's presale evaluation for the parcel, it is proper to consider such second high bid and to issue a lease therefor, if it is in the government's best interest to do so.

APPEARANCES: Joe V. Peacock, Esq., Phillips Petroleum Company, Midland, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This appeal arises from the refusal of the New Mexico State Office, Bureau of Land Management (BLM), to accept the bid of Phillips Petroleum Company (Phillips) for an oil and gas lease offered at a competitive sale where the ostensible highest bidder did not meet the required qualifications set forth in the notice and the regulations.

The facts of the case are these:

1. BLM duly published a notice of sale for the tract in question pursuant to statute and regulations, fixing the time and place for opening bids as 1:00 p.m., March 30, 1976, at Santa Fe, New Mexico.

2. The notice required each bid to be accompanied by various certificates relative to equal opportunity employment compliance, nonsegregation of facilities, independent price determination of the bid and qualifications of the bidder to hold federal oil and gas leases, as well as payment of one-fifth of the amount bid as bonus in the form of a cashier's check, certified check or money order. The notice also provided that BLM reserved the right to reject any and all bids, and that any bid considered as inadequate on the basis of estimated value of a parcel would be rejected.

3. Phillips' bid complied with all the requirements of the notice, regulations and statute.

4. Pursuant to the notice, the bids were opened at 1:00 p.m., March 30, 1976. Sixteen bids were received for parcel 33a. 1/

5. One Jack Mask (Mask) submitted a bid of \$281.35 per acre, aggregating a total of \$45,016.00 for the 160-acre parcel, but accompanied his bid with only one-ninth of the bonus offered.

6. Phillips' bid of \$257.04 per acre for a total of \$41,126.40, was higher than any tendered for parcel 33a except for that of Mask.

7. By letter of April 6, 1976, the Chief, Minerals Section, BLM, Santa Fe, returned the remittance for parcel 33a, \$8,225.28, to Phillips with advice that its bid was lower than the high bid for the parcel.

1/ PARCEL NO. 33(a) - Shugart-North Benson Field

1. Jack Mask	\$281.35	\$45,016.00
2. Phillips Petroleum Company		41,126.40
3. Stephen C. Helbing		35,200.00
4. Wm. J. Green		25,137.60
5. Hoover H. Wright		21,600.00
6. Texaco Inc.	18,689.72	
7. Yates Petroleum Corporation		12,280.00
8. Joe B. Schultz	12,000.00	
9. Gulf Oil Corporation		10,794.00
10. Thomas G. Fails		10,667.20
11. Elk Oil Company		8,990.00
12. Herman J. Ledbetter		5,248.00
13. Read & Stevens, Inc.		4,016.00
14. Hanagan & Hanagan		4,000.00
15. Michael Shearn	3,660.00	
16. Western Reserves Oil Company		880.00

8. By decision of April 30, 1976, the bid of Mask was rejected for his failure to accompany the bid with one-fifth of the bonus offered. See Sarkey's Inc., 26 IBLA 141 (1976). 2/

9. Phillips, by letter of June 2, 1976, returned its check for \$8,225.28 and requested reconsideration of its tender of \$257.04 per acre for parcel 33a as being the highest bid from a responsible qualified bidder.

10. The petition was denied by BLM decision of June 10, 1976, for the stated reason that the regulations do not provide for acceptance of a second high bid. This appeal followed.

While there is no specific regulation permitting the acceptance of a rejected bid, neither is there one specifically prohibiting it. As the Solicitor stated in North American Coal Corp., 74 I.D. 209 (1967), the essential elements in competitive sales are fairness and impartiality to all bidders and not an undeviating compliance with the regulations. One element of fairness to all bidders is the integrity of the bidding systems. As was stated by the Court of Claims in Massman Construction Company v. United States, 60 F. Supp. 635, 643, 102 Ct. Cl. 699, cert. denied, 325 U.S. 866 (1945):

To have a set of bids discarded after they are opened and each bidder has learned his competitor's price is a serious matter, and it should not be permitted except for cogent reasons.

The Comptroller General has held repeatedly that the public interest in protecting the integrity of the competitive bidding system is so great that the United States may accept a once-rejected bid when it is in the public interest to do so. 53 Comp. Gen. 775 (1974); 48 Comp. Gen. 19 (1968); 46 Comp. Gen. 371 (1966); 42 Comp. Gen. 604 (1963).

In B-179929, the Comptroller General stated:

In order for acceptance and award to take place, the Government must have in its possession a responsive and viable bid. However, this is not to say

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2/ Mask appealed from this decision, but his appeal was dismissed by Order of the Board for failure to comply with the regulations relating to the prosecution of appeals. Jack Mask, IBLA 76-635 (August 12, 1976).

that in proper circumstances the Government may not choose to accept a bid, once expired, which has subsequently been revived by the bidder. A limitation set by the bidder on the time in which its bid may be accepted serves to benefit the bidder in markets where there are frequent fluctuations in price or product demand. Expiration of the acceptance period enables the bidder, if it desires, to refuse to perform any contract awarded to it thereafter and deprives the Government of any right to create a contract by acceptance action. Nonetheless, the bidder may waive an acceptance time limitation, before or following expiration of the acceptance period, if it is still willing to accept an award on the basis of the bid as submitted. 46 Comp. Gen. 371, 373 (1966); 42 id. 604, 606 (1963); B-143404, November 25, 1960. However, the bidder may not by such action compel the Government to accept its bid. Since the Government would not have been able to compel the bidder to extend its acceptance period beyond the stated number of days, it does not appear entirely inequitable that the bidder cannot force the Government to do so. 48 Comp. Gen. 19, 22 (1968).

In our opinion it is apparent from Surplus Tire's execution of the waiver form that it intended to extend the life of its bid. Otherwise, the waiver would have been meaningless.

However, as we noted above, the contracting officer is not compelled to make the award to Surplus Tire unless it is clearly in the best interest of the Government to do so.

53 Comp. Gen. 737, 738 (1974).

The issue here, then, is whether it is in the public interest to accept the re-offered bid from Phillips. That bid greatly exceeded the presale evaluation placed on the parcel by the government and Phillips would have been considered the highest responsible qualified bidder if Mask had submitted no bid.

[1] The bid from the highest responsible qualified bidder may not be rejected unless there is a reasonable basis in fact for such action. Cf. H. & W Oil Co., Inc., 22 IBLA 313 (1975); Exxon Co., U.S.A., 15 IBLA 345 (1974). It would be inequitable to Phillips and damaging to the public interest in the integrity of the bidding process to set the sale aside and permit the

other bidders to have a second opportunity against Phillips. See Massman Construction Co. v. United States, supra.

Unless there have been changes in the geological or other factors upon which the evaluation of the parcel was based, it would seem to be in the public interest to accept the bid from Phillips rather than to re-advertise the sale.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside. The case is remanded to the State Director for New Mexico to consider whether it is in the public interest to accept the bid from Phillips.

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Douglas E. Henriques  
Administrative Judge

We concur.

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Martin Ritvo  
Administrative Judge

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Frederick Fishman  
Administrative Judge

